

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

LIFEHOUSE PARKVIEW OPERATIONS, LLC d/b/a  
PARKVIEW HEALTHCARE CENTER,  
Employer,<sup>1</sup>

and

Case No. 31-RC-8833

SEIU, SERVICE EMPLOYEES INTERNATIONAL  
UNION,  
Petitioner.<sup>2</sup>

**DECISION AND DIRECTION OF ELECTION**

On July 30, 2010, SEIU, Service Employees International Union (SEIU or Petitioner), filed petition 31-RC-8833<sup>3</sup> under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit composed of all full-time, part-time and on-call licensed vocational nurses (LVNs) employed by LifeHouse Parkview Operations, LLC d/b/a Parkview Healthcare Center (Parkview or Employer) at its nursing home (Facility) located at 329 North Real Road, Bakersfield, CA 93309.

---

<sup>1</sup> The name of the Employer appears in the caption as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears in the caption as amended by stipulation of the parties.

<sup>3</sup> The petition contained in the formal papers as part of the Board's Exhibit 1 is the incorrect petition. Although the document contains the correct case number, 31-RC-8833, the petition is actually for another R-case with the same Employer concerning a different unit. However, it is apparent from the record that at the hearing the parties were aware of the unit description in the correct petition. Attached as Exhibit A is a true and correct copy of the petition for this case, 31-RC-8833.

On August 17, 18, 19, and 20, 2010, a hearing was held on the referenced petition. The sole issue presented at the hearing was whether LVN Charge Nurses are supervisors within the meaning of Section 2(11) of the Act and should therefore be excluded from the unit.<sup>4</sup>

It is the Employer's position that the LVN Charge Nurses are supervisors and should therefore be excluded from the unit. It is the position of the Petitioner that the LVN Charge Nurses are not supervisors and should be included in the petitioned-for bargaining unit.

For the reasons set forth in Section V below, I conclude that the LVN Charge Nurses are not supervisors within the meaning of Section 2(11) of the Act and I will include them in the unit.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

**I. HEARING OFFICER RULINGS:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

**II. JURISDICTION:** The parties stipulated and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.<sup>5</sup>

**III. LABOR ORGANIZATION:** The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

---

<sup>4</sup> There are a total of 29 LVNs employed at Parkview. Of these, 27 are Charge Nurses who the Employer contends are supervisors within the meaning of Section 2(11) of the Act. At the hearing, the parties stipulated that the two LVNs who are not Charge Nurses are not supervisors within the meaning of Section 2(11) of the Act. The parties further stipulated that if the Regional Director found the LVN Charge Nurses to be supervisors, the two LVNs stipulated not be supervisors constitute an appropriate unit.

<sup>5</sup> The Employer, LifeHouse Parkview Operations, LLC d/b/a Parkview Healthcare Center, is a California corporation with a place of business located in Bakersfield, California, where it is engaged in the operation of a nursing home. Within the past twelve months, a representative period, the Employer's gross revenue from the operation of the nursing home exceeded \$100,000, and during this same period of time the Employer purchased and received goods and supplies valued in excess of \$5,000 directly from enterprises located outside the state of California.



**IV. QUESTION CONCERNING COMMERCE:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>6</sup>

**V. APPROPRIATE UNIT:** Based on the following, the record as a whole, and the mandate of Section 9(b)(1), I find that the LVN Charge Nurses are not supervisors within the meaning of Section 2(11) of the Act, as amended, and should be included in the bargaining unit. Accordingly, I find that the following employees will constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time, regular part-time, and on-call LVNs employed by the Employer at its facility located at 329 North Real Road, Bakersfield, CA 93309.

**EXCLUDED:** RNs, all other employees, confidential employees, guards and supervisors as defined in the Act.

There are approximately 29 employees in the petitioned-for unit.

In analyzing the issue in this case, I will first provide a brief background, then specifically discuss evidence presented in the hearing regarding the following supervisory criteria: (1) assign; (2) responsibly direct; (3) discipline or effective recommendation thereof; (4) suspend or effective recommendation thereof; (5) effectively recommend hiring; and (6) effectively recommend discharges.

#### **A. General Background**

The Employer is a long-term nursing care facility located in Bakersfield, California. The Facility has a capacity of 180 residents<sup>7</sup> and is open 24 hours a day, seven days per week. In order to provide round-the-clock care to residents, the Employer has a nursing staff of approximately 130

---

<sup>6</sup> The parties stipulated and I find there is no contract or any other bar that would preclude the processing of this petition.

<sup>7</sup> "Resident" and "Patient" are used interchangeably.

employees who work during one of three shifts (7:00 a.m. to 3:00 p.m., 3:00p.m. to 11:00 p.m., or 11:00 p.m. to 7:00 a.m.) at one of three wings (A, B, or C). The nursing staff consists of one Director of Nursing Services (DNS), one Assistant Director of Nursing Services, Resident Nurse Supervisors (RN Supervisors), Licensed Vocational Nurses (LVNs), Certified Nursing Assistants (CNAs), and Restorative Nurse Assistants (RNAs). Of the twenty-nine (29) LVNs at the Employer, twenty-seven (27) are LVN Charge Nurses who are responsible for managing patient care.

During each shift, there is always one RN Supervisor present at the Facility.<sup>8</sup> Depending on the shift and the wing, an LVN Charge Nurse will work with three (3) to nine (9) CNAs to provide resident care. CNAs are primarily in charge of tasks such as getting residents out of bed, dressing, feeding, bathing, physically turning in bed those residents who cannot get out of bed, and tidying up rooms. LVN Charge Nurses are responsible for dispensing medication to residents, maintaining patient charts, and overseeing resident care. As LVN Charge Nurses perform these tasks, they will check that CNAs are completing their daily tasks.

### **B. Supervisory Classification**

Section 2(11) of the Act defines the term “supervisor” as:

any individual having the authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The criteria listed in Section 2(11) are in the disjunctive so that the exercise of any one of the indicia listed in Section 2(11) may warrant a finding of supervisory status; however, Section 2(11) also contains the “conjunctive requirement that the power be exercised with ‘independent judgment,’ rather than in a ‘routine’ or ‘clerical’ fashion.” *Chevron U.S.A.*, 309 NLRB 59, 61 (1992).<sup>9</sup> To demonstrate independent judgment, the putative supervisor “must at minimum act, or

---

<sup>8</sup> The Employer asserts that the RN Supervisors do not supervise any other employees.

<sup>9</sup> The United States Supreme Court described the conjunctive requirement of Section 2(11) with three prongs: 1) the employee has the authority to engage in any one of the twelve Section 2(11) criteria; 2) the exercise of such authority requires the use of

effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB 686, 692 (2006).

The party asserting supervisory status has the burden of proving its assertion by the preponderance of the evidence. *Id.* at 694. “[P]urely conclusory” evidence is not sufficient to establish supervisory status; a party must present evidence that the employee “actually possesses” the Section 2(11) authority at issue. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). When evidence of any of the Section 2(11) indicia is established, the analysis proceeds to determining whether the individual exercises that authority using independent judgment. *Oakwood Healthcare*, 348 NLRB at 692. Any lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409, 1409 (2000). “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Applying the criteria set forth in Section 2(11) and relevant Board law, I find that, as explained below, the Employer has failed to establish that the LVN Charge Nurses are supervisors.

## **1. Assign**

### **a. Facts**

The Employer contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to assign CNAs.

The Employer asserts that the LVN Charge Nurses “supervise[] nursing unit, which includes scheduling and directing the nursing staff” as described in the LVN job description drafted by the Employer. With respect to assignment, the job description also states that an LVN “assigns nursing care to team members in accordance with the resident’s needs and the person’s capabilities and qualifications.” According to the Director of Nursing Services (DNS), LVN Charge Nurses can

independent judgment; and 3) the employee holds the authority in the interest of the employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 US 706, 712-13 (2001).



adjust CNA assignments "at any time, according to the resident/patient need," and they also decide which CNA is assigned to take care of a newly admitted resident. Furthermore, according to the DNS, the LVN Charge Nurse "knows the CNA and can disperse their CNAs to best fit the needs of those patients" when assigning or re-assigning CNAs, which involves consideration of residents' acuity and the personalities, strengths and talents of the CNAs. The DNS provided the names of six different CNAs who have come to her office and told her that they had reassigned CNAs, but the DNS provided no further details.

The record establishes that the Staff Coordinator, not an LVN Charge Nurse, sets the monthly master CNA schedule. This schedule provides the time, wing, and section number that each CNA will work for every shift during the month. The section number is the means by which the rooms in each wing are divided evenly among the CNAs assigned to a particular wing. Generally, the RN will assign rooms on a daily basis to specific sections which have been pre-assigned to CNAs in the monthly master CNA schedule. However, sometimes LVN Charge Nurses will have to assign the rooms to the sections. When doing so, LVN Charge Nurses do not take into account patients' acuity or CNAs' skills; they merely divide the number of rooms by the number of CNAs in order to distribute the work evenly.

When a new patient is admitted, LVN Charge Nurses do not decide which room the patient will be put in; that is done by the interdisciplinary team. Once put in a room, the CNA already assigned to that room will automatically be assigned to the new patient. According to the LVN Charge Nurses, they do not change or reconsider CNA assignments based on the arrival of a new patient. In addition, if a patient, a patient's family member, or CNA complain about a patient-CNA assignment, the LVN Charge Nurses will refer the matter to the RN Supervisor or Social Services. At most, LVN Charge Nurses will only reassign CNAs upon obtaining permission from a RN Supervisor. However, there are no specific examples of such occurrences on the record.

The LVN Charge Nurses also do not determine the CNAs' overall duties. CNAs have pre-assigned tasks that they perform routinely.<sup>10</sup> According to the LVN Charge Nurses, they do not have the authority to change the CNAs' overall duties or to require a CNA to come in early, stay late, or to come in on a day during which the CNA is not scheduled to work. If short-staffed, the LVN Charge Nurse will notify the RN so that he or she can take care of the situation. Furthermore, according to the LVN Charge Nurses, they do not have the authority to allow a CNA to leave early. One LVN Charge Nurse, however, did testify that he had such authority if the CNA were ill but that he has not exercised that authority without authorization from an RN Supervisor.

b. Analysis

In *Oakwood Healthcare*, the Board interpreted the authority to "assign" to mean the act of "designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee . . ." *Oakwood Healthcare*, 348 NLRB at 689. The party seeking to establish supervisory authority must show that the putative supervisor has the ability to *require* that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to request that a certain action be taken. *Golden Crest Healthcare*, 348 NLRB at 729. *See also Heritage Hall, E.P.I. Corp.*, 333 NLRB 458, 459 (2001) (putative supervisors found not to exercise supervisory authority where they had no authority to require off-duty employees to fill a particular shift). Furthermore, the authority to "assign work," must be exercised with the requisite independent judgment. *Oakwood Healthcare*, 348 NLRB at 692. The mere equalization of workloads does not require the exercise of independent judgment. *Id.* at 698.

The record demonstrates that the LVN Charge Nurses generally do not assign CNAs to a wing or a shift, nor do they assign CNAs' overall duties. *Id.* at 689. The Staff Coordinator in fact assigns the CNAs to shifts, wings, and to sections within wings. Furthermore, the CNAs' overall duties are predetermined and the LVN Charge Nurses have no authority to change those

---

<sup>10</sup> CNAs' breaks during their shift are also pre-assigned and the LVN Charge Nurses do not determine when CNAs will take their breaks.

responsibilities. The LVN Charge Nurses also do not have the authority to require CNAs to come in early, stay late or work on a day off. Given these facts, the LVN Charge Nurses do not have the authority to assign. *Id.*

In the limited circumstances where LVN Charge Nurses do assign CNAs, they do so without exercising independent judgment. When LVN Charge Nurses have to assign rooms to sections, the LVN Charge Nurses merely assign rooms to the CNAs' pre-assigned sections in a routine and clerical manner with the sole purpose of distributing work evenly; they do not take into account residents' needs or CNAs' skills but merely divide the number of rooms by the number of CNAs. The Board has held that the "mere equalization of workloads" does not require the exercise of independent judgment." *Id.* at 693-694. Therefore, because the LVN Charge Nurses' assignment of rooms to sections lacks independent judgment, the LVN Charge Nurses do not exercise supervisory authority in making such assignments.

Furthermore, the fact that an LVN Charge Nurse may allow a CNA to leave work early if he or she is ill does not establish supervisory authority. Here, one LVN Charge Nurse stated that he had the authority to send a CNA home in such an instance. Notwithstanding the fact that the LVN Charge Nurse asserted he has not allowed a CNA to go home early for illness without the authorization from an RN Supervisor, allowing an employee to leave early due to illness does not involve the exercise of independent judgment. *Loyalhanna Health Care Associates d/b/a Loyalhanna Care Center*, 352 NLRB 863, 864 (2008) (citation omitted).

The Employer contends that LVN Charge Nurses can reassign CNAs based on patients' acuity and needs and CNAs' skills. However, such "conclusory statements made by witnesses in their testimony, without supporting evidence, do not establish supervisory authority." *Sears, Roebuck & Co.*, 304 NLRB 193, 193 (1991) (citing *American Radiator Corp.*, 119 NLRB 1715, 1718 (1958)). Here, the DNS's testimony provided no such supporting evidence. The DNS only provided the names of six LVN Charge Nurses who had told her that they had reassigned CNAs. However, the DNS did not provide any other details about when these incidents occurred or why the LVN Charge Nurses had reassigned the CNAs. Without more, these examples do not



demonstrate whether or not the LVN Charge Nurses exercised independent judgment in making these reassignments. Lacking evidence of independent judgment, these examples are not evidence of supervisory authority. *Oakwood Healthcare*, 348 NLRB at 692.

There is testimony of one LVN Charge Nurse who stated that he had the authority to reassign CNAs once he conferred with an RN Supervisor. However, the LVN Charge Nurse did not provide any examples of the exercise of such authority. Furthermore, he explained that by conferring with the RN Supervisor, he would be seeking input and permission to reassign. The Board has held that in order to exercise independent judgment, “an individual must at minimum act ... free of the control of others.” *Id.* at 693. Therefore, the LVN Charge Nurse, in reassigning a CNA only after seeking permission from a RN Supervisor, would not be exercising independent judgment because she would not be acting “free of the control of others.” *Id.*

Finally, that the Employer’s LVN job description states that they schedule nursing staff and assign nursing care is insufficient to establish supervisory authority. The Board has held that “Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority.” *Training School at Vineland*, 332 NLRB 1412, 1416 (2000) (citations omitted).

Accordingly, I find that the Employer has failed to carry its burden of showing that the LVN Charge Nurses assign CNAs or other employees within the meaning of Section 2(11) of the Act.

## **2. Responsibly Direct**

### **a. Facts**

The Employer contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to responsibly direct CNAs.

The LVN job description, which applies to LVN Charge Nurses, states that an essential function of an LVN is “directing the nursing staff to the extent permitted by state practice act.” According to the DNS, when she started working at the Employer in May 2010, she met with the

LVN Charge Nurses and discussed their job responsibilities. The DNS “told [LVN Charge Nurses] that they are expected to fulfill their charge nurse responsibilities. They are expected to round, monitor, correct, educate, discipline if necessary, as is in their job description.” Thus, the Employer asserts that the LVN Charge Nurses “are expected” to direct the CNAs. The Employer contends that the LVN Charge Nurses direct the CNAs because they “monitor” that the CNAs are doing their job. In monitoring the CNAs, the LVN Charge Nurses are responsible “to find the owner of [a] glitch, educate or correct or discipline.” Furthermore, if the LVN Charge Nurse discovered that a CNA failed to complete a task and did not take action against the CNA, the DNS would hold the LVN Charge Nurse accountable by disciplining or educating him or her.

The record establishes that in the course of a shift, the LVN Charge Nurses constantly communicate with CNAs. At the beginning of the shift, the LVN Charge Nurses will communicate to the CNAs information contained in the 24-hour report and other information relayed to the LVN Charge Nurse by the LVN Charge Nurse on the previous shift. Generally, the information that the LVN Charge Nurses share with the CNAs relates to the care of patients such as doctor’s appointments, scheduled therapy sessions, changes in condition, and any other special circumstances that have been brought to the LVN Charge Nurses’ attention. The LVN Charge Nurses do not instruct the CNAs as to their daily duties nor do they tell them when to complete each of their tasks. The CNAs follow a daily routine which the LVN Charge Nurses play no role in determining and which the CNAs know well.

In order to fulfill their duties of distributing medication and making rounds to check on patients, the LVN Charge Nurses will enter patients’ rooms and observe such things as whether patients have been gotten out of bed, cleaned, bathed, changed, fed and whether the room is tidy; all of these tasks are part of the CNAs’ daily routine. If the LVN Charge Nurse discovers a problem with the performance of these tasks such as a dirty diaper on the floor, the LVN Charge Nurse will usually pick up the diaper and throw it away. However, the LVN Charge Nurse can speak to the CNA and remind her to perform her job properly. If a problem persists with the CNA’s performance, the LVN Charge Nurse will refer the matter to the RN Supervisor.

Besides reminding the CNAs to complete tasks when they discover a problem, the LVN Charge Nurses will provide instruction to the CNAs to complete tasks such as getting a patient ready for a doctor's appointment or therapy, or remind them to turn a patient every two hours. These instructions are based on doctor's orders or, in the instance of the reminder to turn a patient, on standard protocol for proper care. Furthermore, although no specific example was provided, if an LVN Charge Nurse found that a CNA was having difficulty feeding a patient or completing any task, the LVN Charge Nurse could ask another CNA to complete the task. In doing so, although all CNAs have the same skills but some are more experienced, the LVN Charge Nurse would assign any available CNA to complete the task irrespective of experience or skill.

The LVN Charge Nurses may also instruct CNAs to perform certain tasks like calling 9-1-1 or getting a crash cart in the event of a "code blue;" a code blue is the term used when a patient is found not breathing and without a pulse. Although there is no guide for LVN Charge Nurses to follow, in giving instructions to the CNAs during a code blue, an LVN Charge Nurse will simply direct whoever is available to perform the necessary tasks to assist the patient without regard to skill level or experience.

According to the LVN Charge Nurses, they were not told that they would be held accountable for the CNAs' job performance or that the CNAs' job performance would affect their own pay and benefits. However, LVN Charge Nurses' performance evaluations include rating categories for "Supervises, directs and evaluates junior staff members and CNAs" as well as "Supervises nursing unit, which includes scheduling and directing the nursing staff to extent permitted by state practice act." Two of the performance evaluations in the record are accompanied by Personnel Action Notices (PAN) that indicate that the LVN Charge Nurses referenced in the PANs were given a pay increase. Furthermore, two LVN Charge Nurses were given written warnings because two CNAs working in their respective wings were found asleep while on duty. In addition, on one occasion the DNS directed an LVN Charge Nurse to pick up dirty linen which a CNA should have picked up. Also, "a few years ago," a former DNS verbally reprimanded an LVN Charge Nurse because a CNA failed to get a patient out of bed.



b. Analysis

Responsible direction is exercised by persons who have rank and file employees under them and who decide what job shall be undertaken next or who shall do it, provided the direction is “responsible.” *Oakwood Healthcare*, 348 NLRB at 691. Direction is “responsible” if the person performing the oversight is accountable for others’ performance of the tasks, such that some adverse consequences may befall the one providing the oversight if the tasks are not performed properly. *Id.* at 692. Further, to establish accountability for purposes of responsible direction, “it must be shown that the employer delegated the work and authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* In addition, responsible direction must also involve the exercise of independent judgment. In order to exercise independent judgment, a putative supervisor “must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id.* at 692-693. Furthermore, “judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement.” *Id.* at 693.

The record here establishes that the LVN Charge Nurses have the authority to direct CNAs. The LVN Charge Nurses monitor that CNAs have performed their tasks while making rounds. In doing so, the LVN Charge Nurses can instruct CNAs to correct a mistake or to complete a task. Furthermore, the LVN Charge Nurses instruct CNAs to perform tasks such as getting patients ready for doctor’s appointments and therapies. They can also ask a CNA to complete another CNA’s task who is having trouble. The Board has held such acts of monitoring CNA assignments and correcting work constitute direction. *I.H.S. Acquisition No. 114, Inc. d/b/a Lynwood Manor*, 350 NLRB 489, 490 (2007).

Furthermore, the direction is responsible. Notwithstanding the fact that the LVN Charge Nurses assert that they were never told that they would be held accountable for the CNAs’ job performance, the record establishes accountability. Although no LVN Charge Nurse performance

evaluations have been conducted during the current DNS's tenure at the Employer, the record includes performance evaluations completed in June 2009 which include the rating categories, "Supervises, directs and evaluates junior staff members and CNAs" as well as "Supervises nursing unit, which includes scheduling and directing the nursing staff to extent permitted by state practice act." Two of these evaluations are accompanied by Personnel Action Notices (PAN) that indicate that the LVN Charge Nurses referenced in the PANs were given a pay increase. Although the PAN and the performance evaluations are separate documents, the pay increases authorized in the PAN are made effective within a week of the performance evaluations. Thus, this is more than conclusory evidence that the "putative supervisor's rating for direction of subordinates may have, either by itself or in combination with other performance factors, an effect on that person's terms and conditions of employment." *Golden Crest*, 348 NLRB at 731.

The record also establishes that LVN Charge Nurses have been disciplined for CNAs' job performance. Two LVN Charge Nurses were issued written warnings because CNAs in their wings were found asleep on the job. In addition, a former DNS verbally reprimanded an LVN Charge Nurse because a CNA failed to get a patient out of bed. Thus, the records supports finding that direction is responsible.

However, although the LVN Charge Nurses responsibly direct the CNAs, they do not exercise independent judgment in doing so. Generally, "the degree of independent judgment is reduced when directing employees in the performance of routine, repetitive tasks." *Franklin Hospital Medical Center d/b/a Franklin Home Health Agency*, 337 NLRB 826, 831 (2002) (citation omitted). In *Franklin Hospital Medical Center*, the Board denied review of a Regional Director's finding that RNs at the employer did not exercise independent judgment in directing aides. *Id.* at 826. In that case, the RNs: created an "Aide Plan for Care" for aides to follow while providing at-home care; monitored and observed the aides' performance of tasks; instructed or trained the aides on how to perform tasks when necessary; and evaluated the aides' performance. *Id.* at 828-829. In denying the employer's request for review, the Board relied in part on the Regional Director's finding that the facts as described above were insufficient to find that the RNs exercised independent judgment. *Id.* at 831.

Similarly here, the LVN Charge Nurses do not exercise independent judgment in directing the CNAs. The LVN Charge Nurses merely direct the CNAs “in the performance of routine, repetitive tasks.” *Id.* When LVN Charge Nurses go beyond directing the CNAs in the performance of routine tasks and direct CNAs to prepare patients for appointments or therapies, they merely follow instructions and orders predetermined as part of the patients’ care by the doctor. In doing so, the LVN Charge Nurses do not “discern and compare data” because such direction is “dictated or controlled by ... instructions.” *Oakwood Healthcare*, 348 NLRB at 692-693. Likewise, when LVN Charge Nurses instruct a CNA to assist another CNA who is struggling with a task or in instructing the staff to perform specific tasks during a code blue, the LVN Charge Nurses do not “discern or compare data” because they do not consider CNAs’ skills or experience. *Id.*

Thurs, because the record establishes that the LVN Charge Nurses do not exercise independent judgment in directing CNAs, I find that the Employer has not carried its burden of showing that the LVN Charge Nurses responsibly direct CNAs or other employees within the meaning of Section of 2(11) of the Act.

### **3. Discipline or Effective Recommendation Thereof**

#### **a. Facts**

The Employer also contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to discipline or effectively recommend the discipline of CNAs.

The LVN job description states that an essential function of an LVN is to participate in “counseling, disciplinary action and termination of staff, to the extent permitted by state practice act” as well as “orientation and in-service training of personnel.” According to the DNS, when she started working at the Employer in May 2010, she met with the LVN Charge Nurses and discussed their job responsibilities. The DNS “told [LVN Charge Nurses] that they are expected to fulfill their charge nurse responsibilities. They are expected to round, monitor, correct, educate, discipline if necessary, as is in their job description.” Thus, the Employer asserts that the LVN Charge Nurses have the responsibility and the authority to discipline the CNAs, and that they do in fact issue



verbal and written warnings. According to the DNS, most of the LVN Charge Nurses' discipline of CNAs is verbal.

The record establishes that LVN Charge Nurses monitor CNAs' job performance in the process of dispensing medication and doing patient rounds. In doing so, LVN Charge Nurses can instruct CNAs to correct any mistakes or remind them to complete tasks which the CNAs have failed to do. If a problem persists with a particular CNA, the LVN Charge Nurse will refer the matter to the RN Supervisor to address without giving any recommendation regarding discipline. Also, the LVN Charge Nurses can and do conduct in-service trainings for the CNAs.

The LVN Charge Nurses assert that no one has told them they have the authority to issue disciplinary warnings. They further assert that they have no authority to issue disciplinary warnings without authorization or direction from a superior. The LVN Charge Nurses do admit having authority to issue verbal "warnings" but are referring to the ability to tell CNAs to correct a mistake or to remind them to complete a task. The LVN Charge Nurses also assert that they have not issued any warnings that would go on a CNA's personnel record, with one exception discussed below.

Although the Employer's "Employee Progressive Counseling" discipline form provides a way for verbal warnings to be recorded, there are no examples of LVN Charge Nurses recording verbal warnings in this manner in the record. The only evidence in the record of discipline of a CNA by an LVN Charge Nurse is a written warning issued in April 2009. The LVN Charge Nurse who issued the written warning asserts she issued the warning at the direction of Director of Staff Development (DSD). The LVN Charge Nurse asserts that: a patient complained to her that a CNA had hurt him when pulling him in bed; she told the DSD about the incident without recommending any discipline; the DSD instructed her to write up the CNA; she does not know if the DSD investigated the matter; the DSD had the authority to tell her what to do and the responsibility to determine CNA discipline; and that the DSD told her not to write up employees unless she was told to do so.

The Employer also contends that the LVN Charge Nurses have the authority to effectively recommend discipline and that the DNS generally accepts their recommendations. According to the

DNS, in the incident where two CNAs were found sleeping on the job in June 2010, the LVN Charge Nurses recommended leniency for the CNAs, and the DNS followed those recommendations and issued written warnings to the CNAs instead of terminating them. One of the LVN Charge Nurses involved, however, asserts that: she did not recommend any particular discipline; she did not recommend against any particular discipline; and that she was not asked her opinion regarding the matter. There is no other evidence in the record regarding LVN Charge Nurses recommending discipline.<sup>11</sup>

b. Analysis

The Board has held that “the power to ‘point out and correct deficiencies’ in the job performance of other employees ‘does not establish the authority to discipline.’” *Franklin Hospital Medical Center*, 337 NLRB at 830 (citing *Crittenton Hospital*, 328 NLRB 879, 879 (1999)). Furthermore, where oral or written notifications simply bring to an employer’s attention substandard performance by employees without recommendation for future discipline, the individual is merely performing a reporting function, which is not supervisory authority. *Willamette Industries*, 336 NLRB 743, 744 (2001) (citing *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999) (holding that the individuals did not exercise supervisory authority in reporting employees’ infractions to management, who made the final decision as to whether employee discipline was warranted)). Cf., *Mountaineer Park, Inc.*, 343 NLRB 1473, 1475 (2004) (the Board found individuals to have supervisory authority because they brought disciplinary issues to the attention of a higher authority, *recommended* certain discipline, and the recommended discipline was imposed 100 percent of the time.)

The record here establishes that the LVN Charge Nurses do not have the authority to discipline CNAs. Without supporting evidence, the Employer’s conclusory statements that the LVN Charge Nurses have the responsibility and authority to discipline CNAs and that they do in fact issue verbal and written warnings are insufficient to establish such authority. *Sears, Roebuck & Co.*, 304 NLRB at 193. Furthermore, “job descriptions or other documents suggesting the presence of

---

<sup>11</sup> Recommendations related to suspension and discharge will be discussed in separate sections below.

supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority.” *Training School at Vineland*, 332 NLRB 1412, 1416 (2000) (citations omitted). Here, there is no such supporting evidence of actual authority.

First, although the Employer asserts that the DNS informed the LVN Charge Nurses that they were responsible for disciplining CNAs, the LVN Charge Nurses assert that they have not been told that they have the authority to issue disciplinary warnings. “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Furthermore, where the exercise of authority is isolated and at most sporadic, it is insufficient to establish supervisory authority. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878, 879 (1993). See also, *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004) (“The Board has declined to find individuals to be supervisors based on alleged authority that they were never notified that they possessed and where its exercise was sporadic and infrequent.”).

Here, there is no evidence of even sporadic exercise of the authority to discipline. The record only establishes that the LVN Charge Nurses point out and correct deficiencies in the CNAs’ job performance, which is insufficient to establish supervisory authority. *Franklin Hospital Medical Center*, 337 NLRB at 830. Similarly, that LVN Charge Nurses report CNAs’ mistakes or problems with CNAs to RN Supervisors without recommending discipline is also insufficient to establish supervisory authority. *Willamette Industries*, 336 NLRB at 744. The record contains only one example where a LVN Charge Nurse issued actual discipline to a CNA. However, the LVN issued the written warning at the direction of the DSD, without having recommended any kind of discipline herself. Thus, in issuing the warning at the direction of the DSD and not of her own accord, the LVN Charge Nurse did not exercise the requisite independent judgment because her actions were based on the “verbal instructions of a higher authority” and she did not “form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB at 692-



693. Thus, the record establishes that the LVN Charge Nurses do not have the authority to discipline CNAs.

The record also demonstrates that the LVN Charge Nurses do not have the authority to effectively recommend discipline. Beyond conclusory statements, the only evidence in the record regarding the effective recommendation of discipline involves LVN Charge Nurses' recommendation of leniency for CNAs who were caught sleeping on the job. One of the LVN Charge Nurses involved, however, denies making such a recommendation. As stated above, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Furthermore, even if true, this isolated incident is insufficient to establish supervisory authority. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878, 879 (1993). Therefore, the evidence fails to support finding that the LVN Charge Nurses have the authority to effectively recommend discipline.

In sum, I find that the Employer has failed to establish by a preponderance of the evidence that the LVN Charged Nurses possess the authority to discipline or to effectively recommend discipline.

#### **4. Suspend or Effective Recommendation Thereof**

##### **a. Facts**

The Employer contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to suspend or effectively recommend the suspension of CNAs.

The LVN job description states that an essential function of an LVN is to participate in "counseling, disciplinary action and termination of staff, to the extent permitted by state practice act." According to the DNS, she has told LVN Charge Nurses on several occasions that they have the authority to suspend. The Employer further asserts that the LVN Charge Nurses have the authority to effectively recommend suspensions.

The record, however, lacks any examples of any LVN Charge Nurses suspending or recommending that a CNA be suspended. The LVN Charge Nurses assert that they have not suspended anyone and that they lack the authority to do so. However, the record does establish that LVN Charge Nurses have the authority to send CNAs home early if they are unruly or are a threat to patient care. According to the DNS, such an incident would always be considered a suspension. The record, though, also lacks any examples of LVN Charge Nurses sending CNAs home early for endangering patients.

b. Analysis

The record does not establish that the LVN Charge Nurses have the authority to suspend or to effectively recommend suspension. The record contains only conclusory statements which, without specific supporting evidence, are insufficient to establish said authority. *Sears, Roebuck & Co.*, 304 NLRB at 193. Likewise, the job description is not controlling because the Board requires evidence of actual, not paper, authority. *Training School at Vineland*, 332 NLRB at 1416. Here, there is no evidence in the record that the LVN Charge Nurses actually have the authority to suspend or to effectively recommend suspension. In fact, the record establishes that the LVN Charge Nurses have not suspended or effectively recommended the suspension of any CNA.

Furthermore, although the LVN Charge Nurses do have the authority to send a CNA home for mistreating or endangering a patient, this evidence does not establish that the LVN Charge Nurses have supervisory authority. “Authority that is limited to situations involving flagrant and egregious conduct does not normally constitute statutory supervisory authority.” *Regal Health and Rehab Center, Inc.*, 354 NLRB No.71, slip op. at 16 (2009) (citing *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999)). “The Board has reasoned that there is no independent judgment involved [in sending an employee home for patient abuse] because the offenses are ‘obvious violations of the employer’s policies and speak for themselves.’” *Id.* (citing *Children’s Farm Home*, 324 NLRB 61, 67 (1997)). Thus, such authority is not “an indicum of supervisory status.” *Id.*

Therefore, I find that the Employer has failed to adduce evidence sufficient to establish that the LVN Charge Nurses possess the authority to suspend or to effectively recommend suspension.

## **5. Effectively Recommend Hiring**

### **a. Facts**

The Employer further contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to effectively recommend hiring.

The LVN job description states that an LVN “interviews applicants and recommends hires.” According to the DNS, the LVN Charge Nurses have “absolute recommendation authority” and she “heed[s] it.” The DNS asserts that she has made a hiring decision based on the recommendation of an LVN Charge Nurse but cannot recall any details regarding that instance, nor any other instance where an LVN Charge Nurse recommended the hiring of an individual.

The record establishes that the LVN Charge Nurses have not made any hiring recommendations, nor have they evaluated or interviewed any candidates. There is only one incident in which one LVN Charge Nurse recommended that an applicant not be hired. In that instance, though, the DNS “upon investigating, [] found out that [the applicant] had been terminated from our building,” and the applicant was not hired.

### **b. Analysis**

“The power to effectively recommend a hire, as used in Section 2(11), contemplates more than the mere screening of applications or other ministerial participation in the interview and hiring process.” *J. C. Penny Corp.*, 347 NLRB 127, 129 (2006) (citing *Bowne of Houston*, 280 NLRB 1222, 1225 (1986) (assistant foreman who interviewed applicants and advised management of the experience of at least one of them did not make hiring decisions or effective recommendations to hire, as management also interviewed all applicants and had final hiring authority)). Cf., *Fred Meyer Alaska, Inc.*, 334 NLRB 645, 649 (2001) (individuals with authority to interview applicants on their own and who exercised authority to recommend hire were supervisors).

The record here fails to support that the LVN Charge Nurses effectively make hiring recommendations. As stated earlier, conclusory statements and job descriptions, without more, are



insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB at 193; *Training School at Vineland*, 332 NLRB at 1416. Here, contrary to the conclusory statements and the job description, the record indicates that the LVN Charge Nurses have not made any hiring recommendations and have not even evaluated or interviewed any applicants.

There is only one instance where an LVN Charge Nurse recommended that an applicant not be hired. There is no evidence that the LVN Charge Nurse interviewed or evaluated the applicant. The evidence only establishes that the LVN Charge Nurse made a cursory recommendation that the applicant not be hired. Thereafter, the DNS conducted an investigation. Given that the LVN Charge Nurse did not interview or have even a ministerial participation in the evaluation of the candidate, the LVN Charge Nurse did not effectively recommend that the candidate not be hired. *J. C. Penny Corp.*, 347 NLRB at 129.

Accordingly, I find that Employer has failed to carry its burden of showing that the LVN Charge Nurses effectively recommend hiring.

## **6. Effectively Recommend Discharges**

### **a. Facts**

The Employer further contends, and the Petitioner disputes, that LVN Charge Nurses have the supervisory authority to effectively recommend discharges.

The LVN job description states that an LVN “Participates in counseling, disciplinary action and termination of staff, to extent permitted by state practice act.” According to the DNS, the LVN Charge Nurses make recommendations regarding the firing of employees. The record, however, establishes, with one exception, that the LVN Charge Nurses have not made any discharge recommendations. With respect to the sole incident in which an LVN Charge Nurse recommended to an RN that an employee be terminated, the LVN Charge Nurse made the recommendation because he discovered that the employee was committing fraud.<sup>12</sup> There is no evidence, however,

---

<sup>12</sup> The employee was having a co-worker punch him out of work after the employee had already left.

about what effect the RN gave to the LVN Charge Nurse's recommendation. Although the employee was fired, there is no evidence as to whether or not the RN or others in management conducted an investigation prior to terminating the employee.

b. Analysis

As stated earlier, "conclusory statements made by witnesses in their testimony, without supporting evidence, do not establish supervisory authority." *Sears, Roebuck & Co.*, 304 NLRB at 193. Furthermore, "job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority." *Training School at Vineland*, 332 NLRB 1412, 1416 (2000) (citations omitted).

Here, the record consists merely of conclusory statements and a job description, which are insufficient to establish supervisory authority. The only example in the record of an LVN Charge Nurse recommending the discharge of an employee lacks the specificity to establish that the LVN Charge Nurse's recommendation rose to the level of an effective recommendation. There is no evidence in the record as to whether management conducted an investigation of the employee or merely terminated said employee based on the LVN Charge Nurse's recommendation. As the party trying to assert the supervisory authority, it is the Employer's burden to establish the facts to prove such a finding. *Oakwood Healthcare*, 348 NLRB at 694. The Employer here has failed to do so. Furthermore, even assuming that the LVN Charge Nurse had effectively recommended the discharge of the employee in this instance, the isolated exercise of authority is insufficient to establish supervisory status. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB at 879.

Accordingly, I find the evidence regarding the LVN Charge Nurses' authority to effectively recommend discharges was "conclusory" and insufficient to meet the Employer's burden.<sup>13</sup>

---

<sup>13</sup> Although the Employer did not directly contend at the hearing or in its brief that the LVN Charge Nurses possessed the authority to effectively recommend promotions or to adjust grievances, some evidence was adduced at the hearing regarding these indicia. However, the evidence consists only of conclusory statements and is therefore insufficient to meet the Employer's burden. *Sears, Roebuck & Co.*, 304 NLRB at 193.

## 7. Secondary Indicia

The Board has held that secondary indicia “cannot be considered in the absence of evidence ... [of] any of the enumerated categories of authority in Section 2(11) of the Act.” *Palagonia Bakery Co.*, 339 NLRB 515, 535 (2003). As discussed at length above, the record here has failed to establish that the LVN Charge Nurses possess any of the twelve (12) supervisory indicia enumerated in the Act. Thus, that the LVN Charge Nurses may be held out as “supervisors,” attend management meetings, or that the ratio of employees to supervisors may be large without finding that the LVN Charge Nurses are supervisors is immaterial.

**VI. CONCLUSION:** On the basis of the foregoing and the record as a whole, I find that the LVN Charge Nurses are not supervisors within the meaning of Section 2(11) of the Act, as amended, and should be included in the bargaining unit.

## DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **SEIU, Service Employees International Union**. The date, time, and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the voting groups/units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who



have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit Lists of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, one list for each voting group/unit, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the lists available to all parties to the election.

To be timely filed, the lists must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **September 27, 2010**. No extension of time to file these lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The lists may be submitted to the Regional office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>14</sup> by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of these lists will continue to be placed on the sending party. Since the lists will be made available to all parties to the election, please furnish a total of **two** copies, unless the lists are submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

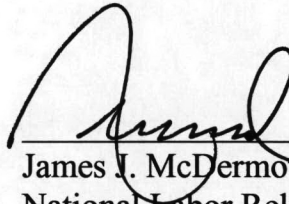
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **October 4, 2010**. The request

---

<sup>14</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>15</sup> but may not be filed by facsimile.

**DATED** at Los Angeles, California this 20th day of September, 2010.



---

James J. McDermott Regional Director  
National Labor Relations Board  
Region 31

---

<sup>15</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIFEHOUSE PARKVIEW OPERATIONS, LLC d/b/a  
PARKVIEW HEALTHCARE CENTER

Employer

and

SEIU, SERVICE EMPLOYEES INTERNATIONAL  
UNION

Petitioner

Case No. 31-RC-8833

**DATE OF MAILING** September 20, 2010

**AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION (\*Also Waiver Forms)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that, on the date indicated above, I served the above-entitled document(s) by postpaid certified mail upon the following persons, addressed to them at the following addresses:

**Served by regular mail:**

\* David S. Allen (**For the Employer**)  
Jackson Lewis LLP  
725 South Figueroa Street, Suite 2500  
Los Angeles, CA 90017

Tim Motooka  
Life House Park View  
329 N. Real Road  
Bakersfield, CA 93309

John A. Ontiveros, Esq.  
Bradley W. Kampass, Esq.  
Jackson, Lewis, LLP  
199 Fremont Street, 10th Floor  
San Francisco, CA 94105

Claudia Juarez, Senior Organizer  
SEIU, Service Employees  
International Union, CTW, CLC  
2515 Beverly Boulevard  
Los Angeles, CA 90057

\* Jennifer Sung, Esq. (**For the Petitioner**)  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108

Marjeli Cruz, Senior Organizer  
SEIU, Service Employees  
International Union, CTW, CLC  
2515 Beverly Boulevard  
Los Angeles, CA 90057

Subscribed and sworn to before me this 20<sup>th</sup> day  
of September, 2010.

DESIGNATED AGENT



NATIONAL LABOR RELATIONS BOARD